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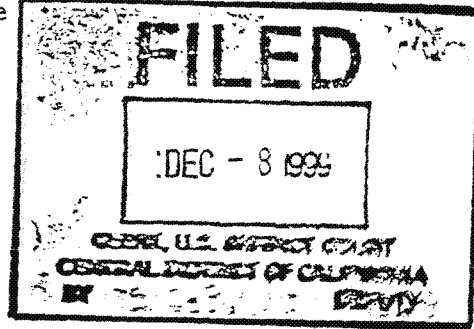
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

UNITED STATES OF AMERICA and)	NO. CV 90-3122- ^R AM (JR _x)
STATE OF CALIFORNIA,)	
)	
Plaintiffs,)	
)	
v.)	THIRD AMENDED COMPLAINT
)	FOR NATURAL RESOURCE
MONTROSE CHEMICAL CORPORATION)	DAMAGES, RESPONSE COSTS
OF CALIFORNIA, et al.,)	AND DECLARATORY RELIEF UNDER
)	<u>42 U.S.C. § 9607(a)</u>
)	
Defendants.)	
)	
AND RELATED COUNTER, CROSS,)	
AND THIRD PARTY ACTIONS.)	



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1 The United States of America, by authority of the Attorney
2 General of the United States at the request and on behalf of the
3 Secretary of Commerce and the Secretary of the Interior and on
4 behalf of the public as trustees for natural resources under
5 their trusteeship, and at the request and on behalf of the
6 Administrator of the Environmental Protection Agency ("EPA"), and
7 the State of California ("State"), on behalf of the Department of
8 Fish and Game, State Lands Commission, and Department of Parks
9 and Recreation on behalf of the public as trustees for the
10 natural resources of the State of California and on behalf of the
11 State of California Department of Toxic Substances Control
12 ("DTSC"), allege:

13 NATURE OF THE ACTION

14 1. This is a civil action brought under Section 107(a) of
15 the Comprehensive Environmental Response, Compensation and
16 Liability Act of 1980 ("CERCLA"), as amended by the Superfund
17 Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C.
18 § 9607(a). In the First Claim for Relief, the United States and
19 the State seek on behalf of the public pursuant to Section 107(a)
20 and (f) of CERCLA, 42 U.S.C. § 9607(a) and (f), declaratory
21 relief and recovery of response costs and damages for injury to,
22 destruction of or loss of natural resources under their
23 trusteeships resulting from releases of hazardous substances into
24 the environment in and around Los Angeles, California, including
25 those parts of the San Pedro Channel area in the vicinity of the
26 Palos Verdes Peninsula ("the Palos Verdes Shelf"), the Los
27 Angeles-Long Beach Harbors and the environs of Santa Catalina
28 Island and the Channel Islands.

2. In the Second Claim for Relief, the United States, at the request and on behalf of the Administrator of EPA, and the State, at the request of DTSC, under Section 107(a)(1-4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1-4)(A), seek recovery of costs incurred and to be incurred by the United States and the State in response to the release or threatened release of hazardous substances into the environment at and from the Montrose Chemical Corporation of California plant ("Montrose DDT Plant") formerly located at 20201 South Normandie Avenue, Los Angeles, California ("Montrose Plant Property"), and property and locations in the vicinity of the Montrose DDT Plant and Montrose Plant Property, where hazardous substances have come to be located, which includes at least: groundwater areas impacted by hazardous substances from the former operations at the Montrose DDT Plant; other nearby commercial and residential land where releases of hazardous substances from the Montrose DDT Plant and Property have come to be located; surface water drainage areas downstream of the Montrose DDT Plant, including the Kenwood Drain, the Torrance Lateral, the Dominguez Channel, and terminating at the downgradient extremity of the Consolidated Slip; two Los Angeles County Sanitation District sewer lines referred to as the J.O. "D" line and the District 5 Interceptor from the immediate vicinity of the Montrose DDT Plant and Property continuing downgradient and terminating at the entrance to the Joint Water Pollution Control Plant; and the environment at the Palos Verdes Shelf. In addition, the Second Claim for Relief seeks recovery of the costs incurred and to be incurred by the United States and the State in response to the release or threatened release of hazardous substances, including PCBs from the Westinghouse

1 Electric Company plant, into the environment at, and from, marine
2 sediments at the Palos Verdes Shelf.

3 JURISDICTION AND VENUE

4 3. This Court has jurisdiction over this action pursuant to
5 Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C.
6 §§ 1331(a) and 1345.

7 4. Venue is proper in this district pursuant to Section
8 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C.
9 § 1391(b) and (c), because the releases of hazardous substances
10 into the environment alleged in this action have occurred from
11 facilities located in this judicial district.

12 DEFENDANTS

13 5. Defendant Montrose Chemical Corporation of California
14 ("Montrose"), a corporation incorporated under the laws of the
15 State of Delaware, operated the Montrose DDT Plant, at the
16 Montrose Plant Property. At that location, Montrose engaged in
17 the manufacture of dichloro-diphenyl-trichloroethane ("DDT") and
18 the formulation of DDT-based products during the period from 1947
19 until 1982.

20 6. Defendant Chris-Craft Industries, Inc. ("Chris-Craft"), a
21 corporation incorporated under the laws of the State of Delaware,
22 is the successor by merger to Baldwin-Montrose Chemical Company,
23 Inc. ("Baldwin-Montrose"), which was the successor by merger to
24 Montrose Chemical Company of New Jersey. Montrose Chemical
25 Company of New Jersey and Stauffer Chemical Company ("Stauffer
26 Chemical") formed Montrose in 1946, with each company holding
27 50 percent of the stock of Montrose. Chris-Craft and its
28 predecessor companies, Baldwin-Montrose and Montrose Chemical
Company of New Jersey, actively participated with Montrose and

1 Stauffer Chemical in the operation of the Montrose DDT Plant
2 during its period of operation.

3 7. Defendant Rhone-Poulenc, Inc. ("Rhone-Poulenc") is a
4 corporation incorporated under the laws of the State of Delaware.
5 Rhone-Poulenc, through its ownership of Rhone-Poulenc Basic
6 Chemicals Company, now a division of Rhone-Poulenc, is the
7 corporate successor to Stauffer Chemical, which from 1943 to 1987
8 held title to the Montrose Plant Property, including the entire
9 period during which Montrose operated its DDT Plant at that
10 location. The title to that land was transferred in 1987 from
11 Stauffer Chemical to Atkemix Thirty-Seven, Inc. ("Atkemix").
12 Stauffer Chemical also held fifty percent of the stock in
13 Montrose from the inception of Montrose in 1946 until 1987, and
14 actively participated with Montrose and Chris-Craft in the
15 operation of the Montrose DDT Plant during its period of
16 operation. Stauffer Chemical also operated a facility on the
17 Montrose Plant Property, where it manufactured benzene
18 hexachloride ("BHC") from approximately 1954 until approximately
19 1963.

20 8. Defendant ZENECA Holdings, Inc. ("ZENECA"), formerly ICI
21 American Holdings, Inc., a corporation incorporated under the
22 laws of the State of Delaware, through its ownership, dominance
23 and control of Stauffer Management Company ("Stauffer
24 Management") and Atkemix, is current owner of the Montrose Plant
25 Property, and is the current holder of the stock interest in
26 Montrose formerly held by Stauffer Chemical. ZENECA, through
27 Stauffer Management and pursuant to contract, has agreed to
28 defend and indemnify Rhone-Poulenc with respect to liabilities of

1 Rhone-Poulenc as corporate successor to Stauffer Chemical in this
2 action.

3 9. Defendant Stauffer Management Company ("Stauffer
4 Management"), a corporation incorporated under the laws of the
5 State of Delaware, is a wholly-owned subsidiary of ZENECA.
6 Stauffer Management is the current owner of the stock interest in
7 Montrose Chemical formerly held by Stauffer Chemical, and,
8 through its ownership, domination and control of Atkemix, is the
9 current owner of the Montrose Plant Property.

10 10. Defendant Atkemix Thirty-Seven, Incorporated
11 ("Atkemix"), a corporation incorporated under the laws of the
12 State of Delaware, is a wholly-owned subsidiary of Stauffer
13 Management. Atkemix is the current holder of the title to the
14 Montrose Plant Property, and is successor to Stauffer Chemical as
15 holder of that title.

16 11. Defendant Westinghouse Electric Corporation
17 ("Westinghouse"), a corporation incorporated under the laws of
18 the Commonwealth of Pennsylvania and doing business in the State
19 of California, operated from approximately 1958 to 1992 a plant
20 located at 18020 South Santa Fe Avenue ("Westinghouse Plant"), in
21 an unincorporated part of Los Angeles County, California. At
22 that Plant, Westinghouse engaged in the manufacture, repair and
23 servicing of electrical equipment, including transformers and
24 capacitors.

25 14. Defendant County Sanitation District No. 2 of Los
26 Angeles County (hereafter "District No. 2") is a unit of local
27 government established pursuant to the laws of the State of
28 California. Pursuant to an agreement entitled the Joint Outfall
Agreement, District No. 2, acting on its own behalf and on behalf

1 of fourteen other county sanitation districts in Los Angeles
2 County (collectively "LACSD"), is an owner and operator of the
3 Joint Outfall System ("JOS"). The JOS consists of a collection,
4 conveyance and treatment system for wastewater from areas within
5 Los Angeles County and includes the Joint Water Pollution Control
6 Plant ("JWPCP"). At the JWPCP, LACSD treats wastewater from the
7 LACSD collection system and discharges the effluent through a
8 system of ocean outfall pipes located at White's Point (White's
9 Point Outfall") into the San Pedro Channel. The other
10 signatories, in addition to District No. 2, to the Joint Outfall
11 Agreement, as most recently amended on July 1, 1980, are County
12 Sanitation Districts Nos. 1, 3, 5, 8, 15, 16, 17, 18, 19, 21, 22,
13 23, and 29 of Los Angeles County and South Bay Cities Sanitation
14 District of Los Angeles County.

15 GENERAL FACTUAL ALLEGATIONS

16 15. Montrose operated the Montrose DDT Plant at the
17 Montrose Plant Property, from 1947 until 1982. During that
18 period Montrose was the largest producer of DDT in the United
19 States. In 1972, domestic agricultural use of DDT was prohibited
20 in the United States. Montrose continued production of DDT at
21 the Montrose DDT Plant primarily for export, and was the only
22 manufacturer of DDT in the United States from that time until
23 1982, when the Montrose DDT Plant was closed.

24 16. The DDT manufacturing process employed at the Montrose
25 DDT Plant involved monochlorobenzene ("MCB"), chloral and
26 concentrated sulphuric acid, and produced caustic and acid
27 process wastes that contained DDT, MCB and other hazardous
28 substances. Montrose arranged for the disposal of wastes
containing hazardous substances, including DDT, from the Montrose

1 DDT Plant in various ways, including through storage and disposal
2 of process waste in a pond located on the Montrose Plant
3 Property, discharge of process and sanitary wastewater to the
4 LACSD sewer system, which system discharged that wastewater
5 through an ocean outfall on to the Palos Verdes Shelf in the San
6 Pedro Channel; deposit of process wastes at landfills in the Los
7 Angeles area, including the Stringfellow Acid Pits, the BKK
8 Company landfill, and a public landfill in Los Angeles County;
9 and ocean dumping of process wastes, which occurred at and in
10 route to sites located in the San Pedro Channel and in the
11 environs of Santa Catalina Island and the Channel Islands.
12 Hazardous substances, including DDT, MCB, and BHC were also
13 released from the Montrose DDT Plant and/or the Montrose Plant
14 Property, through surface water runoff from that site, aerial
15 dispersion from that site, and discharge from that site through
16 the LACSD sewer system to the Palos Verdes Shelf.

17 17. Montrose, at least during the period from 1947 until
18 1961, arranged for the disposal through ocean dumping of process
19 waste containing hazardous substances, including DDT, from the
20 Montrose DDT Plant. That disposal was arranged for by Montrose
21 with waste haulers, including the California Salvage Company.
22 The disposal of the waste material occurred at and in route to
23 ocean dump sites located in and around the San Pedro Channel, and
24 in the environs of Santa Catalina Island and the Channel Islands.
25 The Los Angeles Regional Water Quality Control Board ("RWQCB")
26 has estimated that Montrose arranged for the disposal of waste
27 including as much as 700 metric tons of DDT through ocean dumping
28 during the period 1947-1961.

1 18. Montrose, at least from 1953 until 1971, discharged
2 process wastewater containing hazardous substances, including
3 DDT, from the Montrose DDT Plant and/or Montrose Plant Property
4 into the LACSD collection system that conveys wastewater to the
5 JWPCP and from the JWPCP through the White's Point outfall into
6 the San Pedro Channel on the Palos Verdes Shelf. The RWQCB has
7 estimated that Montrose discharged into the LACSD system process
8 wastewater containing as much as 1800 metric tons of DDT in the
9 period from 1953 to 1971.

10 19. The soil on the Montrose DDT Plant and Montrose Plant
11 Property contains concentrations of DDT in excess of 10 mg/kg,
12 with the DDT concentrations on a large part of that Site
13 exceeding 100 mg/kg, and local concentrations exceeding 10,000
14 mg/kg. On information and belief, hazardous substances,
15 including DDT, have been released into Los Angeles-Long Beach
16 Harbors from the Montrose DDT Plant and Property through storm
17 water runoff from that location into the Torrance Lateral, the
18 Dominguez Channel and the Consolidated Slip. MCB and DDT have
19 been found in the groundwater at the Montrose Plant Property.

20 20. On information and belief, at some time during the
21 1950's, DDT and other hazardous substances from the Montrose DDT
22 Plant were disposed of in certain fill areas located on
23 residential properties in the vicinity of the Montrose DDT Plant,
24 including at least those properties on 204th Street where EPA has
25 undertaken removal actions (the "residential fill areas"). DDT
26 has been found in the soil of these residential properties.

27 21. On information and belief, hazardous substances,
28 including DDT, have been released into the environment from the
Montrose DDT Plant and Montrose Plant Property through release

1 into the air, with subsequent deposit into areas including into
2 the Los Angeles-Long Beach Harbors and the San Pedro Channel.

3 22. The sewer discharge of process wastewater from the
4 Montrose DDT Plant and Montrose Plant Property into the LACSD
5 system ceased in 1971. After that date until plant operations
6 ceased in 1982, Montrose continued to discharge into the LACSD
7 system wastewater from washroom and other facilities at the
8 Montrose DDT Plant. That wastewater discharge from the Montrose
9 DDT Plant into the LACSD collection system continued to contain
10 measurable amounts of DDT up to the time of the plant's closure
11 in 1982. That wastewater was transported through the LACSD
12 system to the JWPCP and from the JWPCP through the White's Point
13 outfall into the San Pedro Channel and onto the Palos Verdes
14 Shelf.

15 23. Rhone-Poulenc, through its corporate predecessor,
16 Stauffer Chemical, and Chris-Craft, and its corporate
17 predecessors Baldwin-Montrose and Montrose Chemical Company of
18 New Jersey, actively participated with Montrose in the operation
19 of the Montrose DDT Plant during times at which there was
20 disposal of hazardous substances at, and releases and threatened
21 releases of hazardous substances from the Montrose DDT Plant, and
22 the land on which that Plant was located, and during times that
23 Montrose arranged for the disposal or treatment by other entities
24 of hazardous substances, including DDT, from the Montrose DDT
25 Plant.

26 24. Rhone-Poulenc, through its corporate predecessor,
27 Stauffer Chemical, was owner of the Montrose Plant Property
28 during the entire period of the operation of the Montrose DDT
Plant at that location, and including times during which there

1 was disposal of hazardous substances, including DDT, at, and
2 releases or threatened releases of hazardous substances,
3 including DDT, from the Montrose DDT Plant and Property.

4 25. On information and belief, Rhone-Poulenc, through its
5 corporate predecessor, Stauffer Chemical, was operator of the BHC
6 plant on the Montrose Plant Property, during the entire period of
7 the operation of the BHC plant. During the operations of the BHC
8 plant, BHC (including the alpha, beta, and gamma isomers of BHC)
9 was released into the environment at and from the Montrose Plant
10 Property.

11 26. On information and belief, ZENECA, through its wholly-
12 owned subsidiaries, Stauffer Management and Atkemix, is the
13 current owner of the Montrose Plant Property, from which there
14 have been releases and threatened releases of hazardous
15 substances, including DDT, into the environment.

16 27. On information and belief, Westinghouse, in the
17 operation of the Westinghouse Plant during the period since 1958,
18 discharged wastewater containing hazardous substances, including
19 polychlorinated biphenyls ("PCBs"), from its Plant into the LACSD
20 collection system that conveys wastewater to the JWPCP, and from
21 the JWPCP through the White's Point Outfall into the San Pedro
22 Channel on to the Palos Verdes Shelf. LACSD identified the
23 Westinghouse Plant in 1972 as a source of PCBs into the LACSD
24 collection system, and discharges of PCBs from the Westinghouse
25 Plant continued until at least 1990.

26 28. On information and belief, District No. 2, on its own
27 behalf and, pursuant to the Joint Outfall Agreement, on behalf of
28 the other signatories to the Joint Outfall Agreement, operates a
jointly-owned system for the collection of wastewater from areas

1 within Los Angeles County, conveyance of that wastewater to the
2 JWPCP, and disposal of that wastewater from the JWPCP through the
3 White's Point Outfall into the San Pedro Channel. The treatment
4 processes used at the JWPCP during the period the JWPCP has
5 received wastewater discharges containing DDT and PCBs from the
6 Montrose and Westinghouse Plants, did not remove all DDT and PCBs
7 from the wastewater received at the JWPCP.

8 29. On information and belief, LACSD did not monitor the
9 DDT and PCB content of its discharge from the JWPCP through the
10 White's Point Outfall prior to 1969. In the period since 1970,
11 LACSD has estimated that the wastewater it discharged from the
12 JWPCP through the White's Point Outfall into the San Pedro
13 Channel contained approximately forty metric tons of DDT and
14 twenty-two metric tons of PCBs.

15 30. Each named defendant is a "person" within the meaning
16 of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

17 31. DDT and its metabolites, including DDE and DDD
18 (collectively "DDT"), and MCB are hazardous substances within the
19 meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

20 32. PCBs are hazardous substances within the meaning of
21 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22 33. BHC is a hazardous substance within the meaning of
23 Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24 34. The terms "DDT" and "PCBs" refer to groups of chemical
25 compounds found generically within the category of chlorinated
26 hydrocarbons. DDT and PCBs have toxic effects on humans and
27 other organisms, are listed as toxic substances pursuant to
28 Section 307(a)(1) of the Federal Water Pollution Control Act,
33 U.S.C. § 1317(a)(1), and are listed by EPA as probable human

carcinogens. These substances are associated in other organisms with skin diseases and abnormalities, diminished reproductive capacity, immunosuppression and other conditions resulting in reduced viability.

35. DDT and PCBs are manufactured chemicals, and are found in nature only if deposited there by human activity. DDT and PCBs are highly persistent in the environment and are bioaccumulative, that is, DDT and PCBs present in the environment, either suspended in water or present in sediments in the water, will remain in, rather than pass through, living organisms, and thereby accumulate in those organisms in concentrations substantially higher than the concentrations of those compounds found in the environment to which the organisms are exposed.

36. DDT and PCBs, including DDT and PCBs discharged by the defendants, are now and will remain available in the future in the environment, including the marine sediments of the Palos Verdes Shelf, in concentrations that endanger the public health and safety, and have caused and will continue to cause injury to natural resources subject to the trusteeship of the United States and the State, including the ocean and harbor sediments, fish, and birds, and have caused elevated contaminant levels in marine mammals. The geographic locations of these hazardous substances include the area in and around the Montrose DDT Plant site, areas surrounding the White's Point Outfall in the San Pedro Channel, including the area surrounding the Palos Verdes Peninsula ("the Palos Verdes Shelf"), in the Consolidated Slip portion of the Los Angeles Harbor, and the Torrance Lateral, Dominguez Channel leading to the Harbor, in the environs of Santa Catalina Island and the Channel Islands, and within the

1 organisms, including species sought for commercial and
2 recreational fishing, in the food web in those areas. The DDT
3 and PCBs contamination is found in the San Pedro Channel at
4 locations both within and beyond three miles seaward of the
5 baseline from which the territorial sea is measured (hereafter
6 "three mile limit").

7 37. The natural resources injured by the releases of
8 hazardous substances, including DDT and PCBs, for which
9 defendants are liable, are located in geographic areas both
10 within and beyond the three mile limit, off the coast of
11 California near the City of Los Angeles. The areas include the
12 Palos Verdes Shelf, the Los Angeles-Long Beach Harbors, and the
13 environs of Santa Catalina Island and the Channel Islands,
14 including the Channel Islands National Park managed by the United
15 States National Park Service. These areas lay partially within
16 the Exclusive Economic Zone ("EEZ") as defined in Section 101 of
17 the Magnuson Fishery Conservation and Management Act of 1974, as
18 amended, 16 U.S.C. § 1811, and partially within the Coastal Zone
19 as that term is defined by Section 304 of the Coastal Zone
20 Management Act of 1972, as amended, 16 U.S.C. § 1453.

21 38. The areas within the San Pedro Channel, the Palos
22 Verdes Shelf, the Los Angeles-Long Beach Harbors, and the
23 environs of Santa Catalina Island and the Channel Islands provide
24 habitat for shellfish, finfish and other organisms, and are areas
25 utilized for commercial and recreational fishing. These areas
26 also include breeding and feeding grounds for wildlife, including
27 species of migratory birds, and for threatened and endangered
28 species, such as the brown pelican, bald eagle and peregrine
falcon.

1 39. The releases of DDT and PCBs into the environment
2 through discharge from the White's Point Outfall, ocean dumping,
3 aerial deposition, and surface water runoff for which defendants
4 are liable, have resulted in elevated levels of DDT and PCBs in
5 and around the Montrose Plant Property, in certain residential
6 properties located in the vicinity of the Montrose Plant Property
7 (including the residential fill areas), in the LACSD sewers in
8 the vicinity of the Montrose Plant Property, in an area of more
9 than forty square kilometers of the sediments of the Palos Verdes
10 Shelf in the areas surrounding the White's Point Outfall, and at
11 an ocean dump site utilized by California Salvage Company for
12 disposal of process waste containing DDT from the Montrose DDT
13 Plant.

14 40. DDT and PCBs in sediments migrate through the food web
15 into plankton and benthic organisms and into fish, marine mammals
16 and birds using the contaminated areas as habitat for breeding
17 and feeding. Elevated levels of DDT and PCBs are found in fish
18 caught at locations in the San Pedro Channel near the White's
19 Point Outfall and within the Los Angeles-Long Beach Harbors, with
20 concentrations of DDT found that exceed the action level for sea
21 food established for that chemical compound by the United States
22 Food and Drug Administration. Species in those areas which have
23 shown elevated levels of DDT and PCBs include species of croaker,
24 queenfish, dover sole, English sole, kelp bass, corbina, sculpin,
25 surf perch and rockfish. The State of California, based on its
26 assessment of the health risk associated with the concentrations
27 of PCBs and DDT found in fish caught at those locations, issued
28 in 1985 a still-continuing health advisory regarding consumption
of fish caught in those areas, followed in 1990 by a ban on

1 commercial fishing for white croaker at locations near the
2 White's Point Outfall, and in 1991 a broader health advisory
3 regarding fish caught in those areas.

4 41. Species of marine mammals, including common and bottle-
5 nose dolphins, and California sea lions, that breed or feed in
6 the areas comprising the San Pedro Channel exhibit high levels of
7 both DDT and PCBs in their tissues.

8 42. Species of migratory birds and threatened and
9 endangered species of birds within the trusteeship of the United
10 States and the State that inhabit, breed and feed in the areas
11 near the San Pedro Channel, including the Los Angeles-Long Beach
12 Harbors, Santa Catalina Island and the Channel Islands, have been
13 eliminated or substantially reduced in population, or otherwise
14 injured through the effects on the health, reproductive capacity
15 and survival of those species of the elevated levels of DDT found
16 in the environment in those areas, and on information and belief,
17 through the effects of the elevated levels of PCBs found in the
18 environment in those areas. Species affected by DDT, and on
19 information and belief, PCBs, include bald eagles, peregrine
20 falcons and California brown pelicans, which are endangered or
21 threatened species. Elevated DDT levels have also been found in
22 other bird species, including double-crested cormorants and
23 Western, Heerman's, and California gulls.

24 43. DDTs and PCBs discharged by defendants have been mixed
25 and commingled in the environment such that the injury to,
26 destruction or loss of natural resources resulting from the
27 releases of these contaminants for which defendants are liable is
28 indivisible.

1 44. DDTs and PCBs discharged by defendants have been mixed
2 and commingled in the environment such that the injury to
3 resources and the endangerment of the public health and safety
4 from the releases of these contaminants for which defendants are
5 liable is indivisible.

6 FIRST CLAIM FOR RELIEF

7 45. The United States and the State reallege and
8 incorporate by reference paragraphs 1 through 44.

9 46. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides
10 that

- 11 (1) the current owner and operator of a facility;
- 12 (2) the owner or operator, at the time of disposal of
13 hazardous substances, of a facility at which such
14 hazardous substances were disposed of; and
- 15 (3) any person who, by contract, agreement or
16 otherwise, arranged for disposal or treatment of
17 hazardous substances owned or possessed by such
18 person, by any other person or entity, at any
19 facility owned or operated by another party or
20 entity and containing such hazardous substances;
21 and
- 22 (4) any person who accepts any hazardous
23 substances for transport to disposal or
24 treatment facilities selected by such
25 person

26 shall be liable for damages for injury to, destruction of, or
27 loss of natural resources, including the reasonable costs of
28 assessing such injury, destruction, or loss resulting from a
release of hazardous substances from such facility.

1 47. Section 107(f)(1) of CERCLA, 42 U.S.C. § 9607(f)(1),
2 provides that liability under Section 107(a)(1-4)(C) of CERCLA,
3 42 U.S.C. § 9607(a)(1-4)(C), for injury to, destruction of, or
4 loss of natural resources shall be to the United States
5 Government and to any State for natural resources within the
6 State or belonging to, managed by, controlled by, or appertaining
7 to such State.

8 48. The Montrose DDT Plant, the Montrose Plant Property,
9 the residential fill areas, the Westinghouse Plant and the
10 property on which it is or was located, the neighboring
11 commercial or residential properties that are contaminated with
12 DDT, MCB, BHC, PCBs, or other hazardous substances, the LACSD
13 Joint Outfall System (including the JOS collection, treatment and
14 disposal system and the White's Point Outfall leading to the San
15 Pedro Channel), the area of the Palos Verdes Shelf surrounding
16 the White's Point Outfall, the groundwater areas impacted by
17 former operations at the Montrose DDT Plant, surface water
18 drainage areas leading from the Montrose DDT Plant to the Los
19 Angeles-Long Beach Harbors, including the Kenwood Drain, the
20 Torrance Lateral, the Dominguez Channel, and consolidated Slip,
21 and the ocean dump sites used for disposal of Montrose waste
22 containing hazardous substances, including DDT, are one or more
23 "facilities" within the meaning of Section 101(9) of CERCLA, 42
24 U.S.C. § 9601(9).

25 49. Montrose, as holder of a lease on the property on which
26 the former Montrose DDT Plant was located, and as operator of the
27 Montrose DDT Plant at the time of disposal of hazardous
28 substances, including DDT, at and from that facility, is the
owner and operator of a facility at the time of disposal of

1 hazardous substances within the meaning of Section 107(a)(2) of
2 CERCLA, 42 U.S.C. § 9607(a)(2). Montrose, in arranging for the
3 discharge of wastewater containing DDT from the Montrose DDT
4 Plant to the LACSD sewer system, and the ocean dumping of process
5 waste containing DDT, is a person who arranged for the disposal
6 or treatment of hazardous substances by another entity at a
7 facility within the meaning of Section 107(a)(3) of CERCLA,
8 42 U.S.C. § 9607(a)(3).

9 50. Chris-Craft, itself and through its corporate
10 predecessors Baldwin-Montrose and Montrose Chemical Company of
11 New Jersey, as an active participant in the operation of the
12 Montrose DDT Plant, is an operator of a facility at the time of
13 disposal of hazardous substances within the meaning of
14 Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and a person
15 who arranged for the disposal of hazardous substances by another
16 entity at a facility, within the meaning of Section 107(a)(3) of
17 CERCLA, 42 U.S.C. § 9607(a)(3).

18 51. ZENECA and its subsidiaries, Stauffer Management and
19 Atkemix, as current owners of the Montrose Plant Property, from
20 which there have been releases of hazardous substances, including
21 DDT, are owners of a facility from which there has been a release
22 of hazardous substances, within the meaning of Section 107(a)(1)
23 of CERCLA, 42 U.S.C. § 9607(a)(1).

24 52. Rhone-Poulenc, as the corporate successor of Stauffer
25 Chemical, which was owner of the Montrose Plant Property, and
26 which was an active participant in the operation of the Montrose
27 DDT Plant, and which operated its BHC plant on the Montrose Plant
28 Property, at a time at which hazardous substances were disposed
of at the Montrose DDT Plant and Property and in the LACSD

1 sewers, is an owner and operator of a facility at the time of the
2 disposal of hazardous substances, within the meaning of Section
3 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and is a person who
4 arranged for the disposal or treatment of hazardous substances by
5 another entity at a facility within the meaning of Section
6 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

7 53. Westinghouse, as operator of the Westinghouse Plant at
8 the time of the discharge from that Plant of wastewater
9 containing PCBs into the LACSD sewer system, is an owner and
10 operator of a facility at the time of disposal of hazardous
11 substances, within the meaning of Section 107(a)(2) of CERCLA,
12 42 U.S.C. 9607(a)(2), and is a person who arranged for the
13 disposal or treatment of hazardous substances by another entity
14 at a facility, within the meaning of Section 107(a)(3) of CERCLA,
15 42 U.S.C. § 9607(a)(3).

16 54. District No. 2, acting on its own behalf and on behalf
17 of the other sanitation districts signatory to the Joint Outfall
18 Agreement with respect to the JOS, through its ownership and
19 operation of the JOS, which accepted for disposal and treatment
20 wastewater containing hazardous substances, and from which there
21 were releases of hazardous substances, is an owner and operator
22 of a facility within the meaning of Sections 107(a)(1) and (2) of
23 CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), and is a person who
24 accepted hazardous substances for transport to disposal or
25 treatment facilities it selected, within the meaning of
26 Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

27 55. Hazardous substances have been and continue to be
28 released to the environment from the facilities identified in

1 paragraph 48 above, within the meaning of Section 101(22) of
2 CERCLA, 42 U.S.C. § 9601(22).

3 56. There has been and continues to be injury to,
4 destruction of, and loss of natural resources for which the
5 United States and the State are trustees, within the meaning of
6 Section 101(16) of CERCLA, 42 U.S.C. § 9601(16), resulting from
7 the releases of hazardous substances by defendants alleged
8 herein, within the meaning of Section 107(a)(4)(C) of CERCLA,
9 42 U.S.C. § 9607(a)(4)(C), with resulting damages to the United
10 States and the State as trustees for those resources under
11 Section 107(f) of CERCLA, 42 U.S.C. § 9607(f).

12 57. The United States and the State have incurred and
13 continue to incur damages for the injury to, destruction of, and
14 loss of natural resources resulting from the releases of
15 hazardous substances for which defendants are liable, including
16 the costs of the assessment of such injury, destruction and loss,
17 and response costs.

18 58. The cost to the public of restoration and replacement
19 of the natural resources injured, destroyed or lost as a result
20 of the releases of hazardous substances for which defendants are
21 liable, including the value to the public of the lost use of
22 these resources, have been estimated in prior filings and
23 discovery in this case.

24 59. The injury to, destruction of, and loss of natural
25 resources alleged herein is not divisible as between defendants,
26 or as between pre- and post-enactment of CERCLA, and pursuant to
27 Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), defendants are
28 jointly and severally liable for all damages, including the cost
of restoration and loss of use, for injury to, destruction of, or

1 loss of natural resources for which the United States and the
2 State are trustees, resulting from the release of hazardous
3 substances for which defendants are liable, including the costs
4 of assessing such injury and damages and response costs incurred
5 by the United States and the State in connection with such injury
6 and damages.

7 60. The United States and the State have satisfied all
8 conditions precedent to the initiation of this action.

9 SECOND CLAIM FOR RELIEF

10 61. The United States and the State reallege and
11 incorporate by reference paragraphs 1-44.

12 62. EPA and DTSC began investigations in 1982 of hazardous
13 substance contamination at and around the Montrose DDT Plant and
14 the Montrose Plant Property. The investigations, including
15 remedial investigations and feasibility studies, are on-going.

16 63. EPA proposed the Montrose site for placement on the NPL
17 on October 15, 1984. The final rulemaking placing the Montrose
18 site on the NPL was published in the Federal Register on
19 October 4, 1989 (54 Fed. Reg. 41015). On August 21, 1997, EPA
20 published a notice of proposed rulemaking to specify that the
21 Montrose NPL Listing includes the Palos Verdes Shelf. 62 Fed.
22 Reg. 44430.

23 64. The results of soil, groundwater and surface water
24 sampling of locations at and around the Montrose Plant Property
25 show DDT, MCB, and BHC contamination of the soil at and around
26 the Montrose Plant Property, including residences near the
27 Montrose DDT Plant and Property; DDT contamination of the surface
28 water runoff from the Montrose DDT Plant and Property to surface
water runoff channels leading to the Los Angeles-Long Beach

1 Harbors; and DDT and MCB contamination of the groundwater
2 underlying the Montrose DDT Plant and Property. EPA has removed
3 approximately 5,000 cubic yards of DDT-contaminated soil from the
4 yards of property owners in residential fill areas.

5 65. High concentrations of DDT in sediments are and have
6 been located in the LACSD sewer line adjacent to and downstream
7 from the Montrose DDT Plant and Montrose Plant Property, and high
8 concentrations of DDT, along with high concentrations of PCBs,
9 have been found in the marine sediments on the Palos Verdes
10 Shelf, in the San Pedro Channel adjacent to the White's Point
11 Outfall operated by LACSD. Montrose, with EPA oversight and at
12 the direction of EPA, has removed approximately 150 tons of DDT-
13 contaminated sediments from the LACSD sewer system.

14 66. In July of 1996, EPA began an investigation, termed an
15 Engineering Evaluation and Cost Analysis, of the DDT and PCB
16 contamination on the Palos Verdes Shelf, and an analysis of
17 potential actions in response to the releases of DDT and PCBs to
18 the Palos Verdes Shelf.

19 67. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides
20 that

- 21 (1) the current owner and operator of a facility;
- 22 (2) the owner or operator, at the time of disposal of
23 hazardous substances, of a facility at which such
24 hazardous substances were disposed of; and
- 25 (3) any person who, by contract, agreement or
26 otherwise, arranged for disposal or treatment of
27 hazardous substances owned or possessed by such
28 person, by any other person or entity, at any
facility owned or operated by another party or

entity and containing such hazardous substances;
and

(4) any person who accepts any hazardous
substances for transport to disposal or
treatment facilities selected by such
person

shall be liable for all costs of removal or remedial action
incurred by the United States and the State not inconsistent with
the national contingency plan.

68. The Montrose DDT Plant, the Montrose Plant Property,
the residential fill areas, the Westinghouse Plant and the
property on which it is or was located, the neighboring
commercial or residential properties that are contaminated with
substances, the LACSD Joint Outfall System (including the JOS
collection, treatment and disposal system and the White's Point
Outfall leading to the San Pedro Channel), the area of the Palos
Verdes Shelf surrounding the White's Point Outfall, the
groundwater areas impacted by former operations at the Montrose
DDT Plant, surface water drainage areas leading from the Montrose
DDT Plant to the Los Angeles-Long Beach Harbors, including the
Kenwood Drain, the Torrance Lateral, the Dominguez Channel, and
consolidated Slip, and the ocean dump sites used for disposal of
Montrose waste containing hazardous substances, including DDT,
are one or more "facilities" within the meaning of Section 101(9)
of CERCLA, 42 U.S.C. § 9601(9).

69. At times relevant to this Complaint, hazardous
substances within the meaning of Section 101(14) of CERCLA,
42 U.S.C. § 9601(14), including DDT, PCBs, BHC, and MCB, were

1 treated, disposed of, released, and presented the threat of
2 release at the facilities identified in paragraph 68.

3 70. Montrose, as holder of a lease on the property on which
4 the former Montrose DDT Plant was located, and as operator of the
5 Montrose DDT Plant located on that property at the time of the
6 disposal of hazardous substances, is an owner and operator of a
7 facility at the time of disposal of hazardous substances within
8 the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C.

9 § 9607(a)(2). Montrose, in arranging for the discharge of
10 wastewater containing DDT from the Montrose DDT Plant to the
11 LACSD sewer system, and the ocean dumping of process waste
12 containing DDT, is a person who arranged for the disposal or
13 treatment of hazardous substances by another entity at a facility
14 within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C.
15 § 9607(a)(3).

16 71. Chris-Craft itself and through its corporate
17 predecessors Baldwin-Montrose and Montrose Chemical Company of
18 New Jersey, as an active participant in the operation of the
19 Montrose DDT Plant, is an operator of a facility at the time of
20 disposal of hazardous substances within the meaning of
21 Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), and a person
22 who arranged for the disposal of hazardous substances by another
23 entity at a facility, within the meaning of Section 107(a)(3) of
24 CERCLA, 42 U.S.C. § 9607(a)(3).

25 72. ZENECA, and its subsidiaries, Stauffer Management and
26 Atkemix, as the current owners of the land which was the location
27 of the former Montrose DDT Plant, are owners of a facility from
28 which there has been a release or threatened release of hazardous

1 substances, within the meaning of Section 107(a)(1) of CERCLA, 42
2 U.S.C. § 9607(a)(1).

3 73. Rhone-Poulenc, as corporate successor to Stauffer
4 Chemical, which was the owner of the land which was the location
5 of the former Montrose DDT Plant, and was an active participant
6 in the operation of the Montrose DDT Plant, at a time at which
7 hazardous substances were disposed of at the Montrose DDT Plant
8 and Property and in the LACSD sewers, and which operated its BHC
9 plant on the Montrose Plant Property, is an owner and operator of
10 a facility within the meaning of Section 107(a)(2) of CERCLA, 42
11 U.S.C. § 9607(a)(2), and a person who arranged for the disposal
12 of hazardous substances by another entity at a facility, within
13 the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. §
14 9607(a)(3).

15 74. Westinghouse, as holder of a lease on the property on
16 which the Westinghouse Plant was located, and as operator of the
17 Westinghouse Plant at the time of the disposal and discharge from
18 that Plant of wastewater containing PCBs into the LACSD sewer
19 system, is an owner and operator of a facility at the time of
20 disposal of hazardous substances, within the meaning of Sections
21 107(a)(2) of CERCLA, 42 U.S.C. §§ 9607(a)(2), and is a person who
22 arranged for the disposal or treatment of hazardous substances by
23 another entity at a facility, within the meaning of Section
24 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

25 75. District No. 2, acting on its own behalf and on behalf
26 of the other sanitation districts signatory to the Joint Outfall
27 Agreement with respect to the JOS, through its ownership and
28 operation of the JOS, which accepted for disposal and treatment
wastewater containing hazardous substances, and from which there

1 were releases of hazardous substances, is an owner and operator
2 of a facility within the meaning of Sections 107(a)(1) and (2) of
3 CERCLA, 42 U.S.C. §§ 9607(a)(1) and (2), and is a person who
4 accepted hazardous substances for transport to disposal or
5 treatment facilities it selected, within the meaning of
6 Section 107(a)(4) of CERCLA, 42 U.S.C. § 9607(a)(4).

7 76. Hazardous substances have been and continue to be
8 released or threaten to be released to the environment from the
9 facilities identified in paragraph 68 above, within the meaning
10 of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

11 77. The United States and the State have incurred response
12 costs not inconsistent with the NCP in connection with response
13 actions at some or all of the facilities identified in paragraph
14 68, within the meaning of Section 101(23) and 101(24) of CERCLA,
15 42 U.S.C. § 9601(23), (24), and will incur future costs in
16 response to the release and threatened release into the
17 environment of hazardous substances, including DDT and MCB from
18 Montrose DDT Plant and Property and PCBs which were released from
19 the Westinghouse Plant.

20 78. The United States and the State have satisfied all
21 conditions precedent to the initiation of this claim for recovery
22 of costs under Section 107(a)(4)(A) of CERCLA, 42 U.S.C.
23 § 9607(a)(4)(A).

24 79. Pursuant to Section 107(a) of CERCLA, 42 U.S.C.
25 § 9607(a), Montrose, Chris-Craft, ZENECA, Atkemix, Stauffer
26 Management, and Rhone-Poulenc are jointly and severally liable
27 for all costs not inconsistent with the NCP incurred or to be
28 incurred by the United States and the State in connection with
removal and remedial actions taken in connection with the

1 facilities identified in paragraph 68, except for any costs that
2 may be incurred relating to the Westinghouse Plant. Westinghouse
3 is jointly and severally liable with all defendants for costs
4 incurred in connection with the facilities identified in
5 paragraph 68, excluding the Montrose DDT Plant and the
6 environment and sewers in the vicinity of the Montrose DDT Plant.
7 LACSD is jointly and severally liable for costs incurred in
8 connection with the facilities identified in paragraph 68,
9 excluding the Montrose DDT Plant and the environment in the
10 vicinity of the Montrose DDT Plant, but including the sewer
11 system in the vicinity of the Montrose DDT Plant.

12 PRAYER FOR RELIEF

13 WHEREFORE, Plaintiffs, the United States of America and
14 State of California, respectfully request that the Court issue
15 relief:

16 1. Entering a declaratory judgment under the First Claim
17 for Relief holding all defendants strictly, jointly and severally
18 liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for
19 all response costs incurred or to be incurred by the United
20 States and the State, and all damages for injury to, destruction
21 of, or loss of natural resources within the trusteeship of the
22 United States and the State, including all reasonable costs
23 incurred or to be incurred by the United States and the State in
24 assessing such injury to, destruction of, or loss, resulting from
25 defendants' releases of hazardous substances into the
26 environment;

27 2. Ordering under the First Claim for Relief that
28 defendants pay to the United States and the State the reasonable
costs of assessing the injury to, destruction of, and/or loss of

1 natural resources within the trusteeship of the United States and
2 the State resulting from defendants' releases of hazardous
3 substances into the environment;

4 3. Ordering under the First Claim for Relief that
5 defendants pay damages for the injury to, destruction of, and/or
6 loss of natural resources within the trusteeship of the United
7 States and the State resulting from defendants' releases of
8 hazardous substances;

9 4. Ordering under the First Claim for Relief that
10 defendants reimburse the United States and the State for all
11 response and damage assessment costs, including enforcement fees,
12 costs and expenses, incurred in connection with the First Claim
13 for Relief in this action, with prejudgment interest;

14 5. Entering a declaratory judgment under the Second Claim
15 for Relief holding defendants strictly, jointly and severally
16 liable to the United States and the State, under
17 Section 107(a)(1)-(4)(A) of CERCLA, 42 U.S.C. § 9607(a)(1)-
18 (4)(A), for all response costs not inconsistent with the NCP,
19 incurred and to be incurred by the United States and the State in
20 connection with response actions taken or to be taken by the
21 United States and the State with respect to the Montrose DDT
22 Plant, the Montrose Plant Property, and the Palos Verdes Shelf
23 and other facilities identified in paragraph 68, except as set
24 forth in paragraph 79;

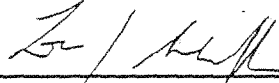
25 6. Ordering under the Second Claim for Relief that
26 defendants pay to the United States and the State all costs not
27 inconsistent with the NCP incurred in connection with removal and
28 remedial actions at the Montrose DDT Plant, the Montrose Plant

Property, and the Palos Verdes Shelf and other facilities
identified in paragraph 68; and

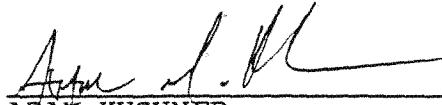
7. Awarding the United States and the State such other and
further relief as this Court may deem appropriate.

Respectfully submitted,

DATED: 10/21/97


LOIS J. SCHIFFER
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Justice

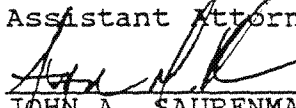
DATED: 11/18/97


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